

Assembly Bill No. 1013

CHAPTER 456

An act to add and repeal Section 3485 of the Civil Code, and to amend Section 1161 of the Code of Civil Procedure, relating to unlawful detainer.

[Approved by Governor October 11, 2007. Filed with
Secretary of State October 11, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1013, Krekorian. Unlawful detainer: nuisance abatement.

(1) Existing law establishes the criteria for determining when a tenant is guilty of unlawful detainer, including conduct involving illegally selling a controlled substance, which is deemed to constitute committing a nuisance on the premises.

This bill would add the circumstance of a person who commits an offense involving unlawful possession or use of illegal weapons or ammunition or uses the premises to further that purpose, to those circumstances that are deemed to constitute a nuisance.

(2) Existing law establishes procedures for unlawful detainer actions in the name of the people for certain nuisances, to be brought by the city attorney or city prosecutor.

This bill would create pilot programs in specified cities in the Counties of Los Angeles, San Diego, Sacramento, and Alameda that would establish as a basis for the unlawful detainer action in the name of the people, an unlawful weapons or ammunition purpose, as defined. The programs, effective until January 1, 2010, would require the city attorney and city prosecutor of each participating jurisdiction to annually provide specified information to the Judicial Council regarding the number of cases for unlawful detainer filed for a weapons or ammunition purpose and would require the Judicial Council to compile that information, and report the merits of the pilot programs to the Legislature by April 15, 2009. By imposing new duties on local officials, the bill would create a state-mandated local program. The bill would make other conforming changes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 3485 is added to the Civil Code, to read:

3485. (a) To abate the nuisance caused by illegal conduct involving an unlawful weapons or ammunition purpose on real property, the city prosecutor or city attorney may file, in the name of the people, an action for unlawful detainer against any person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to that unlawful weapons or ammunition purpose. In filing this action, which shall be based upon an arrest report or other report by a law enforcement agency, reporting an offense committed on the property and documented by the observations of a police officer, the city prosecutor or city attorney shall use the procedures set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except that in cases filed under this section, the following also shall apply:

(1) (A) Prior to filing an action pursuant to this section, the city prosecutor or city attorney shall give 30 calendar days' written notice to the owner, requiring the owner to file an action for the removal of the person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure with respect to an unlawful weapons or ammunition purpose.

(B) This notice shall include sufficient documentation establishing a violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure and shall be served upon the owner and the tenant in accordance with subdivision (e).

(C) The notice to the tenant shall also include on the bottom of its front page, in at least 14-point bold type, the following:

“Notice to Tenant: This notice is not a notice of eviction. However, you should know that an eviction action may soon be filed in court against you for an unlawful weapons or ammunition activity, as described above. You should call (insert name and telephone number of the city attorney or prosecutor pursuing the action) or a legal assistance provider to stop the eviction action if any of the following is applicable:

- (i) You are not the person named in this notice.
- (ii) The person named in the notice does not live with you.
- (iii) The person named in the notice has permanently moved.
- (iv) You do not know the person named in the notice.
- (v) You have any other legal defense or legal reason to stop the eviction action. A list of legal assistance providers is attached to this notice. Some provide free legal help if you are eligible.”

(D) The owner shall, within 30 calendar days of the mailing of the written notice, either provide the city prosecutor or city attorney with all relevant information pertaining to the unlawful detainer case, or provide a written

explanation setting forth any safety-related reasons for noncompliance, and an assignment to the city prosecutor or city attorney of the right to bring an unlawful detainer action against the tenant.

(E) The assignment shall be on a form provided by the city prosecutor or city attorney and may contain a provision for costs of investigation, discovery, and reasonable attorney's fees, in an amount not to exceed six hundred dollars (\$600).

(F) If the city prosecutor or city attorney accepts the assignment of the right of the owner to bring the unlawful detainer action, the owner shall retain all other rights and duties, including the handling of the tenant's personal property, following issuance of the writ of possession and its delivery to and execution by the appropriate agency.

(2) Upon the failure of the owner to file an action pursuant to this section, or to respond to the city prosecutor or city attorney as provided in paragraph (1), or having filed an action, if the owner fails to prosecute it diligently and in good faith, the city prosecutor or city attorney may file and prosecute the action, and join the owner as a defendant in the action. This action shall have precedence over any similar proceeding thereafter brought by the owner, or to one previously brought by the owner and not prosecuted diligently and in good faith. Service of the summons and complaint upon the defendant owner shall be in accordance with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the Code of Civil Procedure.

(3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a case filed pursuant to paragraph (2), the city prosecutor or city attorney may be awarded costs, including the costs of investigation and discovery and reasonable attorney's fees. These costs shall be assessed against the defendant owner, to whom notice was directed pursuant to paragraph (1), and once an abstract of judgment is recorded, it shall constitute a lien on the subject real property.

(4) This article shall not prevent a local governing body from adopting and enforcing laws, consistent with this article, relating to weapons or ammunition abatement. If local laws duplicate or supplement this article, this article shall be construed as providing alternative remedies and not preempting the field.

(5) This article shall not prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

(b) In any proceeding brought under this section, the court may, upon a showing of good cause, issue a partial eviction ordering the removal of any person, including, but not limited to, members of the tenant's household if the court finds that the person has engaged in the activities described in subdivision (a). Persons removed pursuant to this section may be permanently barred from returning to or reentering any portion of the entire premises. The court may further order as an express condition of the tenancy that the remaining tenants shall not give permission to or invite any person who has been removed pursuant to this subdivision to return to or reenter any portion of the entire premises.

(c) For purposes of this section, “unlawful weapons or ammunition purpose” means the illegal use, manufacture, causing to be manufactured, importation, possession, possession for sale, sale, furnishing, or giving away of any of the following:

(1) A firearm, as defined in subdivision (b) of Section 12001 of the Penal Code.

(2) Any ammunition, as defined in paragraph (2) of subdivision (b) of Section 12316 or subdivisions (a) and (b) of Section 12323 of the Penal Code.

(3) Any assault weapon, as defined in Section 12276, 12276.1, or 12276.5 of the Penal Code.

(4) Any .50 BMG rifle, as defined in Section 12278 of the Penal Code.

(5) Any tear gas weapon, as defined in Section 12402 of the Penal Code.

(d) Notwithstanding subdivision (b) of Section 68097.2 of the Government Code, a public entity may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this section.

(e) The notice and documentation described in paragraph (1) of subdivision (a) shall be given in writing and may be given either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the public entity giving the notice, or as shown on the last equalized assessment roll, if not known. Separate notice of not less than 30 calendar days and documentation shall be provided to the tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of giving the notice may be made by a declaration signed under penalty of perjury by any employee of the public entity which shows service in conformity with this section.

(f) This section shall apply only to the following courts:

(1) In the County of Los Angeles, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of Los Angeles or the City of Long Beach.

(2) In the County of San Diego, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of San Diego.

(3) In the County of Alameda, any court with jurisdiction over unlawful detainer cases involving real property situated in the City of Oakland.

(4) In the County of Sacramento, any court with jurisdiction over unlawful detainer cases involving real property situated in the City of Sacramento.

(g) (1) The city attorney and city prosecutor of each participating jurisdiction shall provide to the Judicial Council the following information:

(A) The number of notices provided pursuant to paragraph (1) of subdivision (a).

(B) The number of cases filed by an owner, upon notice.

(C) The number of assignments executed by owners to the city attorney or city prosecutor.

(D) The number of three-day, 30-day, or 60-day notices issued by the city attorney or city prosecutor.

(E) The number of cases filed by the city attorney or city prosecutor.

(F) The number of times that an owner is joined as a defendant pursuant to this section.

(G) As to each case filed by an owner, the city attorney, or the city prosecutor, the following information:

(i) The number of judgments ordering an eviction or partial eviction, and specifying whether each was a default judgment, stipulated judgment, or judgment following trial.

(ii) The number of cases, listed by separate categories, in which the case was withdrawn or in which the tenant prevailed.

(iii) The number of other dispositions, and specifying the disposition.

(iv) The number of defendants represented by counsel.

(v) Whether the case was a trial by the court or a trial by a jury.

(vi) Whether an appeal was taken, and, if so, the result of the appeal.

(vii) The number of cases in which partial eviction was requested, and the number of cases in which the court ordered a partial eviction.

(H) As to each case in which a notice was issued, but no case was filed, the following information:

(i) The number of instances in which a tenant voluntarily vacated.

(ii) The number of instances in which a tenant vacated a unit prior to the providing of the notice.

(iii) The number of cases in which the notice provided pursuant to subdivision (a) was erroneously sent to the tenant. This shall include a list of the reasons, if known, for the erroneously sent notice, such as reliance on information on the suspected violator's name or address that was incorrect, a clerical error, or any other reason.

(iv) The number of other resolutions, and specifying the type of resolution.

(2) (A) Information compiled pursuant to this section shall be reported annually to the Judicial Council on or before January 30 of each year.

(B) The Judicial Council shall thereafter submit a brief report to the Senate and Assembly Committees on Judiciary on or before April 15, 2009, summarizing the information collected pursuant to this section and evaluating the merits of the pilot programs established by this section. The report for this section may be combined with the Judicial Council report submitted for the pilot program established by Section 11571.1 of the Health and Safety Code.

(h) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 1161 of the Code of Civil Procedure is amended to read:

1161. A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

1. When he or she continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him or her; provided the expiration is of a nondefault nature however brought about without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the removal of the occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

2. When he or she continues in possession, in person or by subtenant, without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon him or her and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his or her landlord, if applicable, he or she shall be deemed to be holding by permission of the landlord or successor in estate of his or her landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. When he or she continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the

lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him or her, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or his or her subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his or her unlawful detention of the premises underlet to him or her or held by him or her.

4. Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits an offense included in paragraph (1) of subdivision (c) of Section 11571.1 of the Health and Safety Code, or subdivision (c) of Section 3485 of the Civil Code, or uses the premises to further the purpose of that offense shall be deemed to have committed a nuisance upon the premises.

5. When he or she gives written notice as provided in Section 1946 of the Civil Code of his or her intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice, without the permission of his or her landlord, or the successor in estate of the landlord, if applicable.

As used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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